

814.302 Bid submission.

A bid hand-carried by the bidder or his agent will be considered late unless delivered to the addressee designated in the bid invitation prior to the time set for opening.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 791, Jan. 7, 1985]

814.304 Late bids, late modifications of bids, or late withdrawal of bids.**814.304-2 Notification to late bidders.**

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

814.304-4 Records.

All bids received by mail (or telegram where authorized) will be time and date stamped immediately upon receipt at VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, and it will establish whether or not the delay was due to mishandling on the part of VA.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 814.4—Opening of Bids and Award of Contract**814.402 Opening of bids.**

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) The form and amount of bid security and name of surety will be read aloud and recorded.

[49 FR 12599, Mar. 29, 1985, as amended at 50 FR 792, Jan. 7, 1985]

814.403 Recording of bids.

The information required for bid evaluation shall be recorded on the appropriate Abstract of Offers form (SF 1409 or SF 1419). The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-

2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FAR 14.403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeovers, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

[49 FR 12599, Mar. 29, 1985, as amended at 61 FR 11586, Mar. 21, 1996]

814.404 Rejection of bids.**814.404-1 Cancellation of invitations after opening.**

(a) A copy of each invitation for bids which is canceled as provided for in FAR 14.404-1, together with the abstract showing to whom such bids were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

(b) The authority to approve cancellation of invitations for bid after opening and the authority to approve the acquisition after cancellation as provided in FAR 14.404-1(e) is delegated to the head of the contracting activity. The contracting officer will submit a D&F prepared as prescribed in Subpart 801.7 to the head of the contracting activity for signature.

[49 FR 12599, Mar. 29, 1984, as amended at 51 FR 23068, June 25, 1986; 52 FR 28560, July 31, 1987]

814.404-2 Rejection of individual bids.

(a) When a bid that is being considered for an award is found to be incomplete, e.g., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions that is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and

binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. Such a determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for proper evaluation.

NOTE: In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as non-responsive since consideration of such an offer would unfairly disadvantage other bidders.

814.404-70 Questions involving the responsiveness of a bid.

Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted to the Comptroller General through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate. Pertinent documentation must accompany the submission.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996]

814.406 Mistakes in bids.

814.406-3 Other mistakes disclosed before award.

(a) In accordance with the provisions of the FAR 14.406-3(e), the authority of

the Secretary to make the administrative determinations set forth in FAR 14.406-3 (a), (b), (c), and (d) is hereby delegated, without power of redelegation to the Deputy Assistant Secretary for Acquisition and Materiel Management. This delegation in no way impairs the delegations contained in Comptroller General decision B-122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, after complying with the provisions of FAR 14.406-3, the contracting officer will submit the complete file to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division for an administrative determination. Based upon the evidence submitted, the Deputy Assistant Secretary for Acquisition and Materiel Management will determine the action to be taken by the contracting officer. Prior to its release to the contracting officer, this determination will be submitted to the General Counsel (025) for approval. Pending receipt of the determination, no award shall be made.

(c) Based on the evidence, when the Deputy Assistant Secretary for Acquisition and Materiel Management believes that the case should be submitted to the Comptroller General for decision, he/she will prepare the submission and forward it to the Comptroller General through the General Counsel (025). The decision of the Comptroller General will be furnished to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. A copy of each such decision will be furnished to the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 61 FR 11586, Mar. 21, 1996]

814.406-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FAR 14.406-4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division.

(b) For mistakes in bid alleged after award, the contracting officer's proposed determination, prepared in accordance with FAR 14.406-4, will be forwarded to the General Counsel (025) through the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division for legal coordination. The results of this coordination will be transmitted to the contracting officer by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division. The final determination on the alleged mistake in bid after award will be made by the contracting officer.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Review Division will maintain the agency records of mistakes in bids after award required by FAR 14.406-4.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989, as amended at 61 FR 11586, Mar. 21, 1996]

814.407 Award.

814.407-70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing, and included on or attached to the abstract of bids.

814.407-71 Recommendation for award (construction).

(a) For Central Office contracts, the Chief Facilities Management Officer, Office of Facilities Management, after analyzing all bids received, will submit a memorandum to the Secretary (00) recommending award or other disposition of the project. A copy of each of the following will accompany the memorandum:

- (1) The invitation.
- (2) Each bid received.
- (3) The abstract.
- (4) Any other pertinent data.

(b) On facility level contracts, the Chief, Engineering Service, will analyze all bids received and submit to the contracting officer a memorandum recommending award or other disposition of the project. However, the final decision to accept or reject the lowest responsive bid and the determination as to the responsibility of a prospective contractor shall be made by the contracting officer alone.

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989; 61 FR 11586, Mar. 21, 1996]

814.408 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the Department of Veterans Affairs.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information and will be released to persons outside VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel (025).

[49 FR 12599, Mar. 29, 1984, as amended at 54 FR 30045, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

PART 815—CONTRACTING BY NEGOTIATION

Subpart 815.5—Unsolicited Proposals

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12604, Mar. 29, 1984, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes affecting part 815, see 52 FR 28559, July 31, 1987, and 52 FR 42439, Nov. 5, 1987.

Subpart 815.5—Unsolicited Proposals

SOURCE: 51 FR 6005, Feb. 19, 1986, unless otherwise noted.

815.504 Advance guidance.

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

(b) The FAR contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

815.506 Department procedures.

(a) The Chief, Acquisition and Materiel Management Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Deputy Assistant Secretary for Acquisition and Materiel Management is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by the Department of Veterans Affairs will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) Determine if advance guidance as specified in FAR 15.504 is necessary (2) request that the offeror provide the necessary information if it is determined that the formal evaluation prescribed in FAR 15.506-2 is appropriate; and (3) establish an estimated due date for completion of the review process.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989; 54 FR 42508, Oct. 17, 1989]

815.506-1 Receipt and initial review.

(a) When VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506-1(a) and is related to the mission of VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals which will be evaluated. The log will indicate:

(1) The date the proposal was received;

(2) The date that the unsolicited proposal has been determined to warrant a comprehensive evaluation;

(3) A description of the proposal;

(4) The offices requested to evaluate the proposal and the date such offices are requested to return their evaluations;

(5) The date the reviewing offices finalize their respective evaluation; and

(6) The final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a) (1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the

affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (93) prior to proceeding with negotiation. In order to obtain the approval, the VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR Subpart 6.3 and results of any synopsis required by FAR Subpart 5.2. The Deputy Assistant Secretary for Acquisition and Materiel Management will coordinate the proposal with the cognizant VA Central Office program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a reviewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

[51 FR 6005, Feb. 19, 1986, as amended at 54 FR 40063, Sept. 29, 1989]

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

The Head of the Contracting Activity (as defined in 802.1) is delegated authority to permit correction of mistakes in proposals before award consistent with FAR 15.607.

[54 FR 45736, Oct. 31, 1989]

Subpart 815.8—Price Negotiation

815.804-70 Preproduction and start-up and other nonrecurring costs.

In evaluating start-up and other nonrecurring costs, the extent to which

these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspector General for Policy, Planning and Resources (53), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

[49 FR 12604, Mar. 29, 1984, as amended at 50 FR 792, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

815.805-4 Technical analysis.

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602-70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR Subpart 15.805-4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805-4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805-5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Deputy Assistant Secretary for Acquisition and Materiel Management (93) for review and comment. When deemed